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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

PARNELL COLVIN,	)	CASE NO. 2:20-cv-01765-APG-EJY
	)	
Plaintiff,	)	PLAINTIFF'S RESPONSE TO
	)	DEFENDANT'S FIRST MOTION IN LIMINE
vs.	)	TO EXCLUDE EVIDENCE OR ARGUMENT
	)	RELATED TO OTHER CLAIMS OR
	)	LITIGATION INVOLVING DEFENDANT
M.J. DEAN CONSTRUCTION, INC.,	)	
	)	
Defendant.	)	
	)	Trial: March 27, 2023
	)	Time: 9:00 a.m.
	)	Judge: Honorable Andrew Gordon

Plaintiff PARNELL COLVIN ("Plaintiff" or "Colvin") submits this Response to Defendant M.J. Dean Construction, Inc's ("Defendant" or "M.J. Dean Construction") First Motion in Limine to exclude evidence or argument related to other claims or litigation involving Defendant.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I.**

**PRELIMINARY STATEMENT**

This is a race-based employment discrimination action. Plaintiff Colvin is black. His legal

1 claims of (1) retaliation, (2) discrimination regarding overtime opportunities, (3) harassment and  
2 (4) negligent training and supervision will be heard at trial. He seeks lost wages and  
3 compensatory damages for pain and suffering, including humiliation, embarrassment and  
4 emotional distress relative to the above legal claims. He also seeks attorney's fees and costs.

5 M.J. Dean Construction seeks to exclude evidence or argument related to other claims or  
6 litigation involving Defendant.

7 Although Plaintiff is not aware of any other claims or litigation involving Defendant he  
8 seeks to introduce at trial, Plaintiff position is that other claims or litigation involving both  
9 Plaintiff and Defendant should be excluded at trial.

10 **II.**

11 **THIS COURT MAY EXCLUDE EVIDENCE IN ADVANCE OF**  
12 **TRIAL BY WAY OF AN IN LIMINE MOTION**

13 The Court has authority to grant a motion in limine, in advance of trial, which excludes  
14 inadmissible evidence, as well as any and all reference by the parties, attorneys and witnesses to  
15 the inadmissible evidence. *Luce v. U.S.*, 469 U.S. 38, 41 (1984), 16 Fed. R. Evid. Serv. 833  
16 (1984); *U.S. v. Lachman*, 48 F.3d 586, 590-94, 41 Fed. R. Evid. Serv. 339 (1<sup>st</sup> Cir. 1995).

17 In addition, Federal Rules of Evidence 103(c) and 104(c) allow the court to hear and  
18 determine the question of the admissibility of evidence outside the presence or hearing of the jury.  
19 *Williams v. Board of Regents of University System of Georgia*, 629 F.2d 993, 999-1001 (5<sup>th</sup> Cir.  
20 1980).

21 **III.**

22 **EVIDENCE OF OTHER CLAIMS OR LITIGATION INVOLVING BOTH PLAINTIFF**  
23 **AND DEFENDANT SHOULD BE EXCLUDED FROM INTRODUCTION AT TRIAL AS**  
24 **HEARSAY, INADMISSABLE CHARACTER EVIDENCE, IRRELEVANT OR**  
25 **UNFAIRLY PREJUDICIAL**

26 Federal Rule of Evidence 401 provides that "evidence is relevant if (a) it has any tendency  
27  
28

1 to make a fact more or less probably than it would be without the evidence; and (b) the fact is of  
2 consequence in determining the action.” *Huddleston v. U.S.*, 485 U.S. 681, 682-92, 25 Fed. R.  
3 Evid. Serv. 1 (1988); *U.S. v. Brandon*, 17 F.3d 409, 443-46 (1<sup>st</sup> Cir. 1994) (rejected on other  
4 grounds by, *U.S. v. Stockheimer*, 157 F.3d 1082 (7<sup>th</sup> Cir. 1998)). Evidence must be excluded  
5 where it is not relevant to matters at issue. *Arlio v. Lively*, 474 F.3d 46 (2nd Cir. 2007) (evidence  
6 regarding a prior arbitration was irrelevant and should have been excluded); *U.S. v. Edwards*, 631  
7 F.2d 1049, 1051 (2d Cir. 1980) (trial judge had discretion to exclude two witnesses that were  
8 offered by the defendant as irrelevant and collateral.) Further, “[T]he court may exclude relevant  
9 evidence if its probative value is substantially outweighed by a danger of one or more of the  
10 following: unfair prejudice, confusion of the issues, misleading the jury, undue delay, wasting  
11 time, or needless presenting cumulative evidence.” *Federal Rule of Evidence 403*.

12 In addition hearsay is a statement other than one made by the declarant while testifying at  
13 the trial or hearing, offered in evidence to prove the truth of the matter asserted. *Federal Rule of*  
14 *Evidence 801*. Finally evidence of a person’s character or trait of his or her character, whether in  
15 the form of an opinion, evidence of reputation, or evidence of specific instances or his or her  
16 conduct, is inadmissible when offered to prove his or her conduct on a specified occasion.  
17 *Federal Rule of Evidence 404*.

18 In this case, if other claims or litigation involving Defendant are inadmissible hearsay or  
19 character evidence or not relevant to the issues present in this case or any probative value is  
20 substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the  
21 jury, etc. then how could other claims or litigation involving Plaintiff somehow not be hearsay,  
22 inadmissible character evidence, be relevant and their probative value not be substantially  
23 outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, etc.

24 In either case, the jury would be asked to conclude that because of the other claims or  
25 litigation the Plaintiff or Defendant as the case may be, is liable or not liable, at least in part,  
26 because of the other claims or litigation.  
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1 Further with respect to the other claims or litigation of Plaintiff that Defendant is trying to  
2 introduce at trial, none of these were disclosed in discovery or made part of the parties Joint  
3 Pretrial Order.

4 Thus for all these reasons, the Court should exclude evidence at trial of other claims or  
5 litigation of both Plaintiff and Defendant.

6 **IV.**

7 **CONCLUSION**

8 For all the reasons stated above, Plaintiff requests that this Court exclude evidence at trial  
9 of other claims or litigation involving both Plaintiff and Defendant.

10  
11 DATED: 3/10/2023

LAW OFFICES OF MICHAEL P. BALABAN

12  
13 BY: /s/ Michael P. Balaban

14 Michael P. Balaban, Esq.

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17  
18 **CERTIFICATE OF SERVICE**

19 I hereby certify that pursuant to FRCP Rule 5(b)(3) and LR IC 4-1(a), a true and correct  
20 copy of the foregoing document was electronically served via the Court's CM/ECF electronic filing  
21 system to the following persons on March 10, 2023:

22  
23 Martin A. Little, Esq.

24 Robert L. Rosenthal, Esq.

HOWARD & HOWARD ATTORNEYS PLLC

*Attorneys for Defendant*

25  
26 /s/ Michael P. Balaban

27 Michael P. Balaban